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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

KENNETH PAXTON RANDELL,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

ROBERT GUILLOU,

Real Party in Interest.

B213134

(Los Angeles County
Super. Ct. No. PC042704)

ORIGINAL PROCEEDINGS in mandate. Melvin D. Sandvig, Judge. Petition granted.

Tharpe & Howell, Christopher S. Maile and Eric B. Kunkel for Petitioner.

No appearance for Respondent.

No appearance for Real Party in Interest.

Kenneth Paxton Randell (“defendant”), the defendant in a personal injury case arising from an automobile accident, filed a petition for writ of mandate seeking to overturn the ruling of the trial court requiring him to answer Judicial Council Interrogatories numbers 10.2 and 16.9, relating to *defendant’s* medical condition at the time of the accident. Defendant also seeks to vacate the sanctions of \$750.

Following our initial review of the petition, we notified the parties we were considering the issuance of a peremptory writ of mandate in the first instance (*Lewis v. Superior Court* (1999) 19 Cal.4th 1232; *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171), directing the respondent court to vacate the discovery order entered on December 3, 2008 in Los Angeles Superior Court Case No. PC042704. The notice indicated to the court and to the parties our preliminary conclusion that (1) the evidence sought by plaintiff Robert Guillou (“plaintiff”) is covered by the doctor-patient privilege, the right of privacy and/or the attorney work-product privilege and (2) the record, as presented to this court, failed to show a reasonable basis for invasion of the privileges. In addition, we stayed enforcement of the discovery order pending further order of this court and invited opposition to issuance of a peremptory writ of mandate in the first instance. We received no response.

DISCUSSION

I.

Interrogatory Number 10.2: “List all physical, mental, and emotional disabilities you had immediately before the INCIDENT. (*You may omit mental or emotional disabilities unless you attribute any mental or emotional injury to the INCIDENT.*)”

Defendant’s objection: “This question is objected to as being shotgun and boilerplate, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, unintelligible, misuse of the Form Interrogatories since the Defendant is not making a personal injury claim, an invasion of his reasonable right of privacy and doctor-patient privilege.”

“[W]rits should only be used in discovery matters to review questions of first impression that are of general importance to the trial courts and to the profession, and

where general guidelines can be laid down for future cases.” (*Oceanside Union School Dist. v. Superior Court* (1962) 58 Cal.2d 180, 185-186, fn. 4.) The standard established by our Supreme Court concerning use of an extraordinary writ to review discovery objections based on relevancy, burden, etc., has been reiterated in numerous cases. (See, e.g., *Palay v. Superior Court* (1993) 18 Cal.App.4th 919, 925.) Thus, the only issues raised in the response appropriate for writ review are the right to privacy and the doctor-patient privilege.

In the motion to compel a further response, plaintiff described the question as necessary because defendant’s “mental status immediately prior to the incident . . . *might* have either been the root cause of the collision, or serve as the basis for mitigating or denying liability.” (Italics added.)

In response to the motion to compel, defendant referred to the fact the accident was more than two years ago and “we have clearly answered” that defendant does not contend that any medical condition of the defendant caused or contributed to the accident.

A waiver requires more than simply denying the allegations in the complaint. The defendant must affirmatively assert the medical condition by way of counterclaim or as an excuse for the conduct alleged in the complaint. Clearly, defendant has not waived the statutory privilege (Evid. Code, § 992) applicable to his mental and medical condition.

The request for defendant’s medical records appears to be a pure fishing expedition. Nothing in the record provided indicates a basis for suspecting defendant had or has any mental, emotional, or physical condition that contributed to the accident. There is no indication the information is even relevant. Defendant’s medical condition clearly is not at issue in the litigation.

The order directing defendant to provide the privileged information requested in Interrogatory Number 10.2 is error.

II.

Interrogatory Number 16.9: “Do YOU OR ANYONE ACTING ON YOUR BEHALF have any DOCUMENT (for example, insurance bureau index reports) concerning claims for personal injuries made before or after the INCIDENT by a plaintiff in this case? Is so, for each plaintiff state:

- (a) the source of each DOCUMENT;
- (b) the date each claim arose;
- (c) the nature of each claim; and
- (d) the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT.”

Defendant contends (1) the work product privilege established in Code of Civil Procedure section 2018.030 protects any information his counsel obtained relating to plaintiff’s prior personal injury claims and (2) the information is more readily available to plaintiff than to defendant, especially as the consent of plaintiff is required in order to obtain the records.

These are valid arguments. Plaintiff is seeking to compel defendant to discover and produce plaintiff’s own medical records. There is no viable basis for requiring defendant’s counsel to perform research for plaintiff. “[I]t defeats the purpose of the Discovery Act to compel one party to perform another party’s research, whether such be laborious or not.” (*Bunnell v. Superior Court* (1967) 254 Cal.App.2d 720, 724.) Subdivision (b) of Code of Civil Procedure section 2018.020 establishes the policy of the State of California is to “Prevent attorneys from taking undue advantage of their adversary’s industry and efforts.”

The order directing defendant to provide further response to Interrogatory Number 16.9 is error.

III

The trial court imposed sanctions of \$750 against defendant and his counsel for opposing the motion to compel further response to discovery.

Subdivision (d) of Code of Civil Procedure section 2030.300 provides “The court shall impose a monetary sanction . . . against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.”

We conclude plaintiff’s use of the interrogatories under the circumstances here was improper and defendant acted with substantial justification in objecting to the interrogatories. Accordingly, we conclude the sanction was improperly imposed against defendant.

CONCLUSION

The order compelling further answers to Judicial Council Interrogatories numbers 10.2 and 16.9 and imposing sanctions on defendant and his counsel is clear error.

Following our review of the petition and the exhibits provided, we conclude defendant’s “ ‘ “entitlement to relief is so obvious that no purpose could reasonably be served by plenary consideration of the issue” [Citation.]’ ” (*Lewis v. Superior Court, supra*, 19 Cal.4th at p. 1241.) Accordingly, the petition for writ of mandate is granted.

DISPOSITON

Let a peremptory writ of mandate issue directing the respondent court to vacate its December 3, 2008 order in which the court: (1) directed defendant to provide further responses to Interrogatory Number 10.2 and Interrogatory Number 16.9, and (2) imposed monetary sanctions against defendant. In its place, the court is directed to enter an order denying plaintiff's motion to compel further answers to the specified interrogatories and to vacate the sanctions.

The stay issued by this court on January 14, 2009 is lifted.

Costs are awarded to defendant in this proceeding.

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KLEIN, P. J.

We concur:

CROSKEY, J.

ALDRICH, J.